

**IN THE COURT OF APPEAL FOR ZAMBIA**  
**HOLDEN AT NDOLA**  
*(Criminal Jurisdiction)*

**APPEAL NO.174 OF 2017**

**BETWEEN:**

**JOSEPH BWALYA**

**AND**

**THE PEOPLE**



**APPELLANT**

**RESPONDENT**

**CORAM: Chashi, Siavwapa and Ngulube, JJA**  
**On 21<sup>st</sup> February and 22<sup>nd</sup> May 2018**

*For the Appellant: H. M Mweemba, Principal Legal Aid Counsel,  
 Legal Aid Board*

*For the Respondent: M.K. Chitundu (Mrs.) Deputy Chief State  
 Advocate, National Prosecutions Authority*

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**JUDGMENT**

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**CHASHI JA**, delivered the Judgment of the Court

**Cases referred to:**

1. **Woolmington v DPP (1935) AC 1**
2. **Machipisha Kombe v The People (2009) ZR 282**
3. **Phiri and Others v The People (1978) ZR 79**
4. **Mkandawire and Others v The People (1978) ZR 46**
5. **Saluwema v The People (1965) ZR 4**
6. **Dorothy Mutale and Richard Phiri v The People (1997) S.J. 51**
7. **Mwewa Muroño v The People (2004) ZR 207**
8. **Martin Nc'ube v The People – CAZ Appeal No. 22 of 2017**

**9. Kenneth Mtonga and Victor Kaonga v The People SCZ Judgment**

**No. 5 of 2000**

**10. Partford Mwale v The People – CAZ Appeal No. 08 of 2016**

**11. R v Baskerville (1916) 2 KB, 658**

**12. King v Job Whitehead (1929) 1 KB, 99**

**13. R v Wilson (1914) 58 Cr APP r, 304**

**Legislation referred to:**

**1. The Penal Code, Chapter 87 of the Laws of Zambia**

**2. The Juveniles Act, Chapter 53 of the Laws of Zambia**

**Other works referred to:**

**1. Evidence: Text and Materials, 2nd edition, by Steve Uglow,  
London, Sweet & Maxwell 2006**

This is an appeal against conviction. The Appellant was convicted of the offence of defilement of a child, contrary to section 138 of **The Penal Code**<sup>1</sup> as amended by Act No. 15 of 2005 and Act No. 2 of 2011 by the Subordinate Court of the First Class sitting at Kabwe.

The Particulars of the offence were that Joseph Bwalya, on 30<sup>th</sup> August, 2015 at Kabwe in the Kabwe District of the Central

